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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ART ANTHONY GABALDON,

Defendant and Appellant.

E063283

(Super.Ct.Nos. RIF1500563 &  
RIF1409952)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez,  
Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a negotiated plea agreement, in case No. RIF1500563, defendant and  
appellant Art Anthony Gabaldon pled guilty to robbery (Pen. Code, § 211)<sup>1</sup> with the

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

personal use of a deadly and dangerous weapon (§ 12022, subd. (b)(1)). Defendant also admitted that he had suffered a prior felony strike conviction, to wit, a November 2014 robbery (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). In return, the remaining allegations were dismissed and defendant was sentenced to a stipulated term of seven years in state prison with credit for time served. In case No. RIF1409952, defendant admitted that he had violated the terms and conditions of his probation by committing another robbery. In exchange, defendant was sentenced to a stipulated term of one year in state prison consecutive to his sentence in case No. RIF1500563. Defendant appeals from the judgment in both cases, challenging the sentence or other matters occurring after the plea. We find no error and affirm.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

On August 1, 2014, in case No. RIF1409952, a felony complaint was filed charging defendant with one count of robbery (§ 211) with the personal use of a knife (§ 12022, subd. (b)(1)).

On November 5, 2014, in a plea to the court, defendant pled guilty to the robbery allegation. In return, on December 30, 2014, the enhancement allegation was stricken, and defendant was placed on probation for a period of 36 months on various terms and conditions and awarded 24 days credit for time served.

On January 21, 2015, defendant took property from a store and got into a fight with a loss prevention officer and another individual as he was leaving. During the fight, defendant used pepper spray.

On January 23, 2015, in case No. RIF1500563, a combined felony complaint and a petition to revoke defendant's probation in case No. RIF1409952 was filed. The felony complaint charged defendant with two counts of robbery (§ 211; counts 1 & 2) with the personal use of a deadly and dangerous weapon, to wit, pepper spray (§ 12022, subd. (b)(1)) and one count of unlawful possession or use of tear gas (§ 22810, subd. (a); count 3). The complaint also alleged that defendant had suffered one prior serious felony (§ 667, subd. (a)) and one prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)) for robbery. The complaint further alleged that defendant had violated the terms and conditions of his probation in case No. RIF1409952 by violating the law when he committed the January 2015 robbery.

On March 12, 2015, defendant entered into a negotiated plea in case No. RIF1500563 and pled guilty to count 1. He also admitted that in the commission of the offense he had personally used pepper spray and that he had suffered one prior strike conviction. In return, defendant was promised a stipulated term of seven years in state prison and dismissal of the remaining charges and allegations. After directly examining defendant, the trial court found that defendant understood his plea form; that defendant understood his constitutional rights; and that there was a factual basis for the plea and admissions. The court also made "all the appropriate findings." Defendant was

thereafter immediately sentenced in accordance with his plea agreement and awarded 72 days credit for time served.

On that same day, in case No. RIF1409952, defendant admitted that he had violated the terms and conditions of his probation by violating the law. In return, defendant agreed to a one-year term, consecutive to the sentence imposed in case No. RIF1500563. Defendant was thereafter immediately sentenced in accordance with his agreement.

On April 7, 2015, the court considered and denied defendant's request to modify his sentence. The court noted that defendant "made a deal with the DAs office to avoid a longer sentence." On that same day, defendant filed a notice of appeal in both cases, challenging the sentence or other matters occurring after the plea.

## II

### DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

CODRINGTON

J.